

**NOMINATIONS OF WAYNE C. BEYER AND
STEPHEN T. CONBOY**

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

ONE HUNDRED NINTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF WAYNE C. BEYER TO BE MEMBER, FEDERAL LABOR
RELATIONS AUTHORITY, AND STEPHEN T. CONBOY TO BE U.S. MAR-
SHAL, SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SEPTEMBER 13, 2006

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NOMINATIONS OF WAYNE C. BEYER AND STEPHEN T. CONBOY

WEDNESDAY, SEPTEMBER 13, 2006

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:33 p.m., in room 342, Dirksen Senate Office Building, Hon. George V. Voinovich, presiding.

Present: Senator Voinovich.

OPENING STATEMENT OF SENATOR VOINOVICH

Senator VOINOVICH. The Committee will come to order. Today, the Committee on Homeland Security and Governmental Affairs meets to consider the nominations of Wayne Beyer to be a Member of the Federal Labor Relations Authority and Stephen Conboy to be U.S. Marshal for the Superior Court of the District of Columbia.

I would like to extend my warm regards to both Mr. Beyer and Mr. Conboy. I would like to say how pleased I am that both of you continue to use your talents to serve your Nation. I would also like to thank your families, who make significant sacrifices in order for you to pursue professions in public service.

Mr. Beyer, the Federal Labor Relations Authority has the responsibility to adjudicate disputes arising out of the Civil Service Reform Act of 1978, including determining what is negotiable through collective bargaining agreements, appeals over unfair labor practices, and hearing petitions for union representation of Federal employees.

While governor of Ohio, I spent a significant amount of my time working to improve labor-management partnerships in Ohio State agencies. Mr. Beyer, I look forward to discussing with you the status of labor-management relations within the Federal Government.

I welcome my friend and Senator and colleague, Senator Judd Gregg, who is here to introduce Mr. Beyer. Senator Gregg, we are very happy that you are here today with us, and we look forward to hearing from you.

TESTIMONY OF HON. JUDD GREGG, A U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator GREGG. Thank you, Senator Voinovich, and it is a pleasure to be here before your Committee to introduce and strongly support the nomination of Wayne Beyer.

Mr. Beyer and I go back a long way, over 20 years, actually, as his career started out in New Hampshire. He went to Dartmouth College and then got a graduate degree, I believe, at Harvard. He practiced law in New Hampshire for a significant amount of time. I have known him as a friend and as someone who always represented a commitment to public service. Back when I was governor, I tried to sign him up to come into the State government, but at that time, he was a young lawyer just trying to get started, and it is a little bit expensive to come into the State service, but he has requited himself extraordinarily well.

As a member of this Administration, as an Administrative Appeals Judge, he understands the issues which will be before him on the Federal Labor Relations Authority. He will bring integrity, intelligence, and capability to this, and he is fair-minded and that is what you want from someone in this position.

I hope this Committee will act favorably on his nomination, and I appreciate the chance to have the opportunity to come here and testify on his behalf.

Senator VOINOVICH. Thank you very much. I know that you have a busy schedule today, so I thank you very much for coming today.

Senator GREGG. Thank you.

Senator VOINOVICH. Mr. Beyer, Senator Gregg must think a great deal of you.

Mr. BEYER. Thank you.

Senator VOINOVICH. Mr. Conboy, as you are well aware, the U.S. Marshals Service is our oldest Federal law enforcement agency. In the District of Columbia, the Marshals Service has the significant responsibility of providing law enforcement for the Federal courts.

With 23 years of experience with the U.S. Marshals Service, Mr. Conboy has served in numerous positions throughout the agency, including Deputy U.S. Marshal, Senior Inspector, Supervisory U.S. Marshal, Chief Deputy, and his current position as Acting U.S. Marshal for the Superior Court of the District of Columbia. Prior to joining the Marshals Service, Mr. Conboy served in the U.S. Marine Corps.

I believe that both of the nominees today are well qualified for the positions for which they have been nominated, and I look forward to hearing from them about their qualifications and other reasons for pursuing public service.

It is the custom of this Committee to swear in witnesses, and if you will both stand up, I will swear you in. Do you swear that the testimony you are about to give is the truth and nothing but the truth, so help you, God?

Mr. BEYER. I do.

Mr. CONBOY. I do.

Senator VOINOVICH. Thank you. I understand that both of you have friends and relatives here today, and supportive colleagues, and I thought that I might give you an opportunity to introduce them. Mr. Beyer, we will start with you.

Mr. BEYER. Thank you, Senator. I am here with Dale Cabaniss, the Chair of the FLRA; Colleen Kiko, who is the General Counsel of the FLRA. I note that Carol Waller Pope, who is the other member of the FLRA, is also here, and I don't see anyone else. Thank you, Senator.

Senator VOINOVICH. Thank you, Mr. Conboy.

Mr. CONBOY. Thank you, Senator. I would like to first recognize my biggest supporter, my wife of 30 years, Elizabeth. She is a teacher with Fairfax County Public Schools and has spent the past 2 years earning a second Master's degree in education with Virginia Tech and the immediate past year as an assistant principal intern at Lorton Station. I am most proud of her. Our two daughters, Anna and Sarah, could not be here today.

I would like to introduce, as well, the Hon. Chief Judge Rufus G. King III, the Hon.—

Senator VOINOVICH. It is nice to have you here with us. Thank you for being here.

Mr. CONBOY [continuing]. Judge Gregory Jackson; the Hon. Pete Elliott, U.S. Marshal for the Northern District of Ohio; the Hon. George Walsh, U.S. Marshal for the District of Columbia. I may mention that there are actually two districts within the District of Columbia, U.S. District and the Superior Court, as well. There are a number of other friends and supporters here.

Senator VOINOVICH. We are glad to have all of you here, and Mrs. Conboy, I thank you for the sacrifice that you have made so that your husband can serve. I am sure you thank him for the sacrifice he makes so you can serve our public schools.

Mrs. CONBOY. Absolutely.

Senator VOINOVICH. We have questions that we ask all of the nominees here before this Committee. I will ask these questions of both of you. First, is there anything that you are aware of in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, sir.

Senator VOINOVICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, Senator.

Senator VOINOVICH. Do you have any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Mr. BEYER. No, Senator.

Mr. CONBOY. No, Senator.

Senator VOINOVICH. I would welcome comments from you, Mr. Beyer, about why you are interested in being appointed. I will then call on you, Mr. Conboy.

TESTIMONY OF WAYNE C. BEYER,¹ TO BE A MEMBER, FEDERAL LABOR RELATIONS AUTHORITY

Mr. BEYER. Thank you, Senator. I do have a brief statement.

Chairman Voinovich and distinguished Members of the Committee, I am honored to appear before you today as the President's nominee to be a Member of the Federal Labor Relations Authority. My career is about evenly divided between private practice in New

¹ The prepared statement of Mr. Beyer appears in the Appendix on page 9.

Hampshire and public service here in Washington. The submissions provide the details.

My strengths include an ability to understand the facts and analyze and apply the law, write well analytically, work productively, and work collegially. Four-and-a-half years as an Administrative Appeals Judge adjudicating cases arising under worker protection laws will be good preparation for the FLRA if I am fortunate enough to serve in that capacity.

I want to recognize and thank those who have contributed to the nomination process, Katja Bullock of the White House, Dale Cabaniss, Chair of the FLRA, the Senate staff, especially Jennifer Hemingway, my friend, Judd Gregg, the senior Senator from New Hampshire, for his kind remarks, the Committee for its time and attention, and, of course, the President for the confidence placed in me. The only way I can prove my gratitude is to perform to the best of my ability if I am confirmed for this important position.

I will answer any questions that you have, Senator.

Senator VOINOVICH. Thank you. Mr. Conboy.

**TESTIMONY OF STEPHEN T. CONBOY,¹ TO BE U.S. MARSHALL,
SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. CONBOY. Thank you, Chairman Voinovich. I would like to thank our President and Commander in Chief for nominating me to this position and to the Attorney General for appointing me to be the Acting U.S. Marshal, a position that I have held since January 2004, and for his confidence in me for this nomination. I would like to recognize and express my sincere appreciation to Mayor Anthony Williams for recommending me to the White House for this position.

As a career Deputy U.S. Marshal with 23 years of experience with the U.S. Marshals Service, I am most proud of being associated with such a fine cadre of brave and dedicated men and women that I have the privilege of working with at Superior Court. The District of Columbia can be proud of the tremendous service that they provide to both this community and to their Nation each day.

I look forward to responding to whatever questions the Committee may have.

Senator VOINOVICH. Thank you.

Mr. Beyer, while the statute divides the Board membership between the two political parties, I believe its judicial function demands members of the Federal Labor Relations Authority to not hold political biases. Do you agree with that?

Mr. BEYER. Yes, I do, Senator.

Senator VOINOVICH. What is your philosophy in approaching this position?

Mr. BEYER. I look at this position as a quasi-judicial position. It is not a policy-making or management position. I would approach each case on its merits, scrupulously applying the law to the facts of each individual case without any predisposition, without any bias. As I think the Senator knows, I have had a similar role for the last 4½ years in the Department of Labor, and I think this would be a good opportunity for me to continue in that kind of role.

¹The prepared statement of Mr. Conboy appears in the Appendix on page 32.

Senator VOINOVICH. Do you have any comments about the current state of labor relations in the Federal Government?

Mr. BEYER. I think, Senator, they are good at the Department of Labor under the guidance of Secretary of Labor Elaine Chao. Outside of the Department of Labor, my knowledge is a little bit more secondhand and more anecdotal. I realize that there is some fluctuation with regard to the Department of Defense and Homeland Security. By and large, I think labor relations are quite stable within the Federal Government, with perhaps those exceptions. I look forward, hopefully, to making my own contribution through the decisions of the cases that arise before me as a member of the FLRA.

Senator VOINOVICH. Mr. Conboy, having served as Acting U.S. Marshal for a while, you have had an insight into some of the challenges inherent in the job. Could you share with me what you think is the biggest challenge facing the U.S. Marshals Service Superior Court Office?

Mr. CONBOY. Senator, I believe the biggest challenge would be in the formulation as to how we approach the resources that are allocated at Superior Court. The functions at Superior Court are very unique to the Marshals Service in that I really serve as the de facto sheriff, if you would. It is a very challenging environment. We perform functions that are not performed anywhere else in the country by the Marshals Service. It is a challenge to ensure these—

Senator VOINOVICH. Could you give me some examples of that?

Mr. CONBOY. Well, one would be performing evictions for the District of Columbia. That is a function that is primarily executed by a county sheriff. We perform upwards of 60 of those a day within the District of Columbia. It is a very challenging job—the security aspect of it, the accountability of performing that on a day-to-day basis.

Senator VOINOVICH. Do you have the resources you need to get the job done? This Committee heard testimony from Secretary Chertoff yesterday and questioned him about whether or not he had the resources to do the job we have asked him to do.

Mr. CONBOY. I believe that we are using the resources that you have provided to us to the very best of our ability. Of course, we could always do more, and we are certainly always performing analysis for what we need to get the job done.

Senator VOINOVICH. What steps have you taken to ensure that all of your employees, including the detention enforcement officers and the Deputy U.S. Marshals, are provided equality of opportunity in terms of training?

Mr. CONBOY. We have a very vigorous program that ensures that deputies at Superior Court are provided the training and the detention officers are provided the training that is required to get the job done. We have mandatory basic and refresher training that is put on at FLETC in Brunswick, Georgia.

Senator VOINOVICH. Do you have a tough time recruiting employees?

Mr. CONBOY. Of course, that is performed on a national level, Senator, so I know that it is an ongoing process. It is a very difficult and cumbersome process, and I would commend our Human

Resources Division for the work that they do in getting those men and women into the ranks.

Senator VOINOVICH. In effect, they scour the country for people that might be interested and provide you with a pool of available applicants?

Mr. CONBOY. Yes, they do, Senator.

Senator VOINOVICH. I understand that, in 2004, the U.S. Marshals Service entered into an intergovernmental agreement with the District of Columbia Department of Corrections for the transportation of prisoners. How is this agreement working?

Mr. CONBOY. I believe that agreement is working absolutely fantastic. It has been an absolute win-win for the Federal Government and for our partners in the District of Columbia. It ensures the timely and safe delivery of prisoners to the courthouse, and, of course, that is something that allows us to free up deputies to perform other functions, such as pursuing fugitives.

Senator VOINOVICH. Once someone is convicted, what is the status of the jail facilities?

Mr. CONBOY. I am sorry, Senator, the status of the jail facilities?

Senator VOINOVICH. I remember the conditions of the Federal facilities in Ohio when I was governor. So I am curious what is the condition of the jail facilities today? Once these folks are convicted, I suspect that you are the ones that have to take them wherever they are going to end up in jail.

Mr. CONBOY. That is correct, Senator.

Senator VOINOVICH. What about the capacity? Do you have enough jail space out there today or are the facilities crowded?

Mr. CONBOY. I believe we do, Senator. That population fluctuates daily. It is something that we in the criminal justice community keep an eye on very closely. Certainly, there has been mandates and caps over there. Presently, we do not have a concern.

One of the differences is that the prisoners coming from Superior Court are not remanded to the U.S. Marshals Service until such time as they are sentenced, unlike U.S. District Court, where they are remanded as soon as they are taken into custody and ordered so by the court. So we really—the population issue, and it is a shared issue, it is not just the Department of Corrections, it is Superior Court and U.S. District Court, and it is something that, as partners, we have to keep our eye on all the time. Parolee issues, prisoners that are being arrested on a daily basis because of new crime initiatives, those all have impacts on the population.

But I will say that we, as partners, have done an absolutely fantastic job in formulating a Memorandum of Understanding that expedites the process so that as soon as they receive a judgment and commitment, we have a time frame in place where we are removing them from the District to their designated facilities within 21 days. So it is a very timely process, and it is one that is being used as a template across the country.

Senator VOINOVICH. So you believe you have adequate facilities to hold convicted individuals during the interim period, and, within 21 days, you transport them to wherever they have been sentenced to? The reason I am asking is that in my State, we are seeing a tremendous overcrowding of our prisons. There has been, for some reason, an uptake in crime. I remember while I was governor,

things started to subside a bit, but now it appears they are again overcrowded. You are telling me that you are not having that problem on the Federal level?

Mr. CONBOY. Presently, no, not within the District of Columbia.

Senator VOINOVICH. Do either one of you have anything else you would like to say, other than your desire for the Committee to move quickly?

Mr. BEYER. No, but thank you, Senator, very much for the opportunity to appear before this Committee.

Senator VOINOVICH. Great. I am pleased that both of you are here, and again, as I mentioned in my earlier remarks, thank you for your willingness to serve your country in the capacity that the President has nominated you. I wish you good luck, and we will do what we can to move your nominations along.

Mr. BEYER. Thank you.

Mr. CONBOY. Thank you.

Senator VOINOVICH. The hearing is adjourned.

[Whereupon, at 2:55 p.m., the Committee was adjourned.]

A P P E N D I X

**Statement of Wayne C. Beyer
Nominee to be a Member of the
Federal Labor Relations Authority
September 13, 2006**

Chairman Voinovich, Ranking Member Akaka and distinguished members of the committee, I am honored to appear before you today as the President's nominee to be a member of the Federal Labor Relations Authority.

My career is about evenly divided between private practice in New Hampshire and government service in Washington. The submissions provide the details. My strengths include an ability to: understand the facts and analyze and apply the law; write well analytically; work productively; and work collegially. Four and a half years as an administrative appeals judge enforcing worker protection laws will be good preparation for the FLRA, if I am fortunate enough to serve in that capacity.

I want to recognize and thank those who have contributed to the nomination process: Katja Bullock of the White House; Dale Cabaniss, Chair of the FLRA; the Senate staff, especially Jennifer Hemingway; my friend, the senior Senator from New Hampshire, Judd Gregg, for his kind remarks; the Committee for its time and attention; and of course the President, for the confidence placed in me. The only way I can prove my gratitude is to perform to the best of my ability if I am confirmed for this important position.

I will answer any questions you may have.

Pleasantville High School, Pleasantville N. Y., 1960-1962
Kennett High School, Conway, N. H., 1962-1963, diploma
Dartmouth College, Hanover, N. H., 1963-1967, A.B.

Harvard University, Graduate School of Education, 1967-1969, M.A.T., 1970
Georgetown University Law Center, 1971-1972, 1974-1977, J.D.

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

See attached.
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

U.S. Small Business Administration Advisory Board, Region 1, 1980s
National Defense Executive Reserve, HUD, 1980s
D. C. Republican Committee Advisory Board, 2003-present
11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

Officer, Director, Cleveland, Waters and Bass, 1987-1993
Officer, Director, Wayne C. Beyer and Associates, 1994-1996
12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

See attached.
13. **Political affiliations and activities:**
 - (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None
 - (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

R.N.C. 72 Hour Task Force, 2004 Election
Advisory Council, D. C. GOP
 - (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

See attached.
14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

A.B. cum laude
Administrator's Public Service Award, GSA
Medal of Merit, Metropolitan Police Department, D.C.
15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

See attached.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

No formal speeches. Professional presentations listed on attachment. Numerous informal presentations/classes for New Hampshire and D.C. police departments on loss prevention/use of force-type issues.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

Probably because of my background, training and experience as a lawyer; my successful service as an appellate judge with the U.S. Department of Labor, handling matters arising under worker protection statutes; and my temperament and philosophy, which is to decide each case on its merits, scrupulously applying the law as it is written and established to the facts as found.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have had a successful and varied career as a lawyer, which has been about evenly divided between private practice and the government, with individuals and governmental entities as clients. My strengths include my ability to: (1) understand the facts and analyze and apply the law; (2) write well analytically; (3) work productively; and (4) and work collegially. My more than four years of service as an administrative appeals judge at the Administrative Review Board are excellent training for the FLRA. Both are quasi-judicial boards; involve appeals and a review of the record; demand application of the law to the facts of individual cases; require board members to work collegially with each other, staff lawyers and support staff; and have jurisdiction over enforcement of labor-employment laws. And the mission of both the ARB and the FLRA is the legally correct, expeditious and just resolution of cases.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

Yes.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No, except for two bar complaints that were dismissed. See attached.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

See attached.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No, except that I recall that Cleveland, Waters, & Bass brought a collection action against a client who owed us for fees.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

A., Biographical Information

9.

Intern teacher, Belmont Junior High School, Belmont, Mass., 1967-1968
 English teacher, Fryeburg Academy, Fryeburg, Maine, summer 1969
 Writer, Situational Training Corp., Newton, Mass., 1969-1970
 English teacher, Dover Regional High School, Dover, Mass., 1970-1971
 Press Assistant, Walter Peterson for Governor Campaign, Concord, N. H., summer 1972
 Press Assistant, McLane for Governor Campaign, Concord, N. H., fall 1992
 Administrative Assistant, New Hampshire Senate President David Nixon, Concord, N.H., 1973
 Press Secretary and Legislative Assistant, U.S. Rep. Peter Kyros, Washington, D.C., 1973-1975
 Press Secretary and Legislative Assistant, U.S. Rep. John Breckinridge, Washington, D.C., 1975-1976
 Law Clerk, Covington and Burling, Washington, D.C., 1976-1977
 Campaign Worker, Hughes for Congress, Manchester, N. H., 1977
 Attorney (associate), McLane, Graf, Raulerson and Middleton, Manchester, N.H.,
 1977-1983.
 Chief of Staff, General Services Administration, Washington, D.C., 1983-1984
 Deputy General Counsel, Washington, D.C., 1984-1986
 Attorney (director, shareholder, and of counsel), Cleveland, Waters and Bass, Concord, N. H., 1986-1994
 Attorney (solo practice set up as corporation), Wayne C. Beyer and Associates, Manchester, N. H., and
 Conway, N.H., 1994-1996
 Attorney (assistant corporation counsel and senior litigation counsel), Office of the Corporation Counsel
 (now called the Attorney General), Washington, D. C., 1996-2002
 Administrative Appeals Judge, Administrative Review Board, U. S. Department of Labor, Washington, D.
 C., 2002-present

12.

Present:

New Hampshire Bar Association
 D. C. Bar
 Bar Association of D.C.
 American Bar Association
 Defense Research Institute
 American Trial Lawyers Association (associate member)
 Republican National Lawyers Association
 Dartmouth Lawyers Association
 Reagan Alumni Association
 Federalist Society
 Supreme Court Historical Society
 International Association of Chiefs of Police (legal officers section)
 National Sheriffs Association
 Police Executive Research Forum
 Harvard Club of N. H. (past vice president and president)
 Harvard Club of Boston
 Harvard Club of Washington
 Kennett High School Alumni Association
 Advisory Council, D. C. GOP

Former:

New Hampshire Trial Lawyers Association
 Manchester and Merrimack County Bar Associations
 Federal Bar Association

Lions Club, Concord, N. H.
 Exchange Club, Manchester, N. H.
 Bush Alumni Association

13.(c)

D.C. Republican Committee, 7/01, \$50.00
 D.C. Republican Committee, 9/01, \$150.00
 Bob Smith for U.S. Senate, 6/02, \$250.00
 D.C. Republican Committee, 7/02, \$105.00
 Republican National Committee, 7/03, \$105.00
 Carol Schwartz for Mayor (D.C.), 10/02, \$100.00
 Ray Burton for N. H. Executive Council, 12/02, \$100.00
 Ruth Griffin for N. H. Executive Council, 12/02, \$100.00
 Peter Spaulding for N. H. Executive Council, 12/02, \$100.00
 Charlie Bass Victory Committee, 12/02, \$100.00
 Gordon Humphrey.com, 12/02, \$100.00
 Republican National Committee, 12/02, \$105.00
 Ray Burton Intern Program, \$100.00
 D.C. Republican Committee, 1/03, \$1,000.00
 N.H. Republican State Committee, 4/03, \$105.00
 Jeb Bradley for Congress, 5/03, \$50.00
 Ray Wiecezorek for N. H. Executive Council, 8/03, \$100.00
 Bush Cheney 04, 9/03, \$105.00
 Peter Spaulding for N. H. Executive Council, 12/03, \$200.00
 Bernard Streeter for Mayor, 12/03, \$100.00
 Ray Burton for N. H. Executive Council, 12/03, \$200.00
 Ruth Griffin for N. H. Executive Council, 12/03, \$200.00
 Ray Wiecezorek for N. H. Executive Council, 12/03, \$200.00
 N.H. Republican State Committee, 1/04, \$1,500.00
 The Judd Gregg Committee, 4/04, \$1,000.00
 D.C. Republican Committee, 6/04, \$1,000.00
 Committee to Re-elect Carol Schwartz (D.C. City Council), 7/04, \$100.00
 Jeb Bradley for Congress, 8/04, \$100.00
 Carol Schwartz (D.C. City Council), 10/04, \$50.00
 Friends of Michael Monroe (for D.C. Delegate to Congress), 10/04, \$50.00
 Republican National Committee, 10/04, \$116.00
 Jeb Bradley for Congress, 10/04, \$100.00
 Bush Cheney 04, 10/04, \$105.00
 N.H. Republican State Committee, 10/04, \$105.00
 Peter Spaulding for N. H. Executive Council, 10/04, \$100.00
 Maryland GOP, 1/05, \$300.00
 Republican National Committee, 2/05, \$117.00
 Holtzman for Governor (of Colorado), 4/05, \$500.00
 Republican National Committee, 5/05, \$105.00
 D.C. Republican Committee, 6/05, \$1,000.00
 Carol Schwartz (D.C. City Council), 6/05, \$100.00
 American Leadership Council Pac, 9/05, \$100.00
 Friends of George Allen, 11/05, \$100.00
 Peter Spaulding for N. H. Executive Council, 12/05, \$100.00
 Bernard Streeter for Mayor, 12/05, \$100.00
 Ray Burton for N. H. Executive Council, 12/05, \$100.00
 Ruth Griffin for N. H. Executive Council, 12/05, \$100.00
 Ray Wiecezorek for N. H. Executive Council, 12/05 \$100.00
 D.C. Republican Committee, 3/06, \$100.00

15.

Articles:

Commercial Obligations under the Act of State Doctrine, 8 LAW & POLICY IN INTERNATIONAL BUSINESS, 1003-1111 (1976).

Screening, Evaluating, and Settling Police Misconduct Cases, TRIAL, July 1993, at 36.

Strategies for Excessive Force Claims, TRIAL, December 1994, at 24.

Police Misconduct: Principles Governing Money Damages and Other Relief Under 42 U.S.C. § 1983, 32 TORTS & INSURANCE LAW JOURNAL 154-95 (ABA 1996).

Police Misconduct: Defenses not Reaching the Merits Under 42 U.S.C. § 1983, 29 THE URBAN LAWYER 475-527 (ABA 1997).

Police Misconduct: Claims and Defenses Under the Fourteenth Amendment Due Process and Equal Protection Clauses, 30 THE URBAN LAWYER 65-143 (ABA 1998).

Defending Police Misconduct Claims: Evaluation, Negotiation, and Settlement, Vol. 41, No. 2 FOR THE DEFENSE 9-15 (The Defense Research Institute 1999).

Police Shootings under the Fourth Amendment, UNIVERSITY OF RICHMOND JOURNAL OF LAW AND PUBLIC INTEREST, VOL VIII, No 2 (Winter/Spring 2005).

Presentations with substantial written materials:

Failure To Protect Since DeShaney, ABA National Institute, New Directions in Government Liability, June 28- 29, 1990, San Francisco, California.

Defenses to Police Liability Actions Under 42 U.S.C. § 1983 and Comparable Claims Under State Law, New Hampshire Bar Assoc., Advanced Civil Rights, March 26, 1993, Concord, New Hampshire.

Defending Police Misconduct Cases, Defense Research Institute, Inc., Civil Rights and Governmental Tort Liability Seminar, January 20-21, 1994, San Diego, California.

Police Misconduct Litigation After Graham: Theory and Practice, Georgetown University Law Center, Twelfth Annual § 1983 Civil Rights Litigation, March 24-25, 1994, San Francisco, California.

Police Misconduct Litigation After Graham: Theory and Practice, Georgetown University Law Center, Twelfth Annual § 1983 Civil Rights Litigation, April 14-15, 1994, Washington, D.C.

Introduction and Update: Defense Issues Under § 1983 -- Qualified Immunity and Other Evolving Defenses, Georgetown University Law Center, Fifteenth Annual § 1983 Civil Rights Litigation, April 3-4, 1997, Washington, D. C.

Police Misconduct: Discovery and Evidence, Georgetown University Law Center, Seventeenth Annual § 1983 Civil Rights Litigation, April 8-9, 1999, Washington, D. C.

Police Misconduct: Trial from the Defense Perspective, Georgetown University Law Center, Eighteenth Annual § 1983 Civil Rights Litigation, April 6-7, 2000, Washington, D. C.

Police Misconduct: Selected Topics from the Defense Perspective, Georgetown University Law Center, Nineteenth Annual § 1983 Civil Rights Litigation, April 5-6, 2001, Washington, D. C.

Discovery, Pretrial Issues, and Evidentiary Issues in Police Misconduct Cases, Federal Judicial Center Workshop on § 1983 Litigation for United States District and Magistrate Judges, Boston, Massachusetts, August 1-3, 2001.

Critical Incidents: How to Deal with a Police Shooting, Local Government Attorneys of Virginia Fall 2001 Conference, September 20-22, Roanoke, Virginia.

Defending the Police Misconduct Suit: Technology and Fourth Amendment Issues, Georgetown University Law Center, Twentieth Annual § 1983 Civil Rights Litigation, April 18-19, 2002, Washington, D. C.

Police Misconduct: Winning Defense Strategies, Georgetown University Law Center, Twenty-third Annual § 1983 Civil Rights Litigation, April 7-8, 2005, Washington, D. C.

Defending the Police Misconduct Case, Georgetown University Law Center Continuing Legal Education, Police Misconduct Litigation, April 19, 2006, Washington, D. C.

D. Legal Matters

1.

In N.H., a client complained to the professional conduct committee when I advised that she seek a second opinion on the value of her personal injury case and said I would expect to be paid for the value of the work already performed if she were successful. The complaint was dismissed. In D.C., opposing counsel complained to bar counsel when I conditioned an offer to settle his client's case on his giving up a separate attorney's fee claim under 42 U.S.C. § 1988. The U.S. Supreme Court permits that procedure. Bar counsel dismissed the complaint.

2.

DWI convictions in 1989 and 1996. Sobriety date 10/5/97.

AFFIDAVIT

Wayne C. Beyer being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this

16th

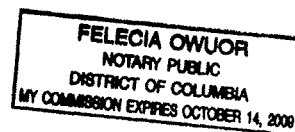
day of

June, 2006

Wayne C. Beyer

File

Notary Public



**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-Hearing Questionnaire for the Nomination of Wayne C. Beyer to be a Member of the
Federal Labor Relations Authority**

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as a Member of the Federal Labor Relations Authority (FLRA)?

I do not know specifically why the President nominated me to serve as a Member of the FLRA Authority decisional component. I assume my selection was based upon my background, training, and experience as a lawyer; my successful service as an appellate judge with the U.S. Department of Labor, handling matters arising under worker protection statutes; and my temperament and philosophy, which is to decide each case on its merits, scrupulously applying the law as it is written and established to the facts as found.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualify you to be a Member of the FLRA?

I have had a successful and varied career as a lawyer, fairly evenly divided between private practice and the government, with individuals and governmental entities as clients. My strengths include my ability to: (1) understand the facts and analyze and apply the law; (2) write well analytically; (3) work productively; and (4) and work collegially. My more than four years of service as an administrative appeals judge at the Administrative Review Board (ARB) are excellent training for the FLRA. Both are quasi-judicial boards; involve appeals and a review of the record; demand application of the law to the facts of individual cases; require board members to work collegially with each other, staff lawyers and support staff; and have jurisdiction over enforcement of labor-employment laws. And the mission of both the ARB and the FLRA is the legally correct, expeditious and just resolution of cases.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as a Member of the FLRA? If so, what are they and to whom have commitments been made?

No. However, I expect to support the goals and objectives of the FLRA and will decide each case on its merits.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

None expected. If any such situation arises, I will follow FLRA procedures for recusal.

6. Have you ever been asked by an employer to leave a job or otherwise left a job on a non-voluntary basis? If so, please explain.

No.

II. Role of a Member, FLRA

7. What is your view of the role of the FLRA?

The role of the FLRA is to administer the *Federal Labor Management Relations Statute* (the Statute) as set forth in Chapter 71 of Title 5, United States Code. The Statute allows certain non-postal federal employees to organize, bargain collectively, and participate through labor organizations of their choice in decisions affecting their working lives. As spelled out in 5 USC §7101(a)(2), the Statute defines and lists the rights of employees, labor organizations, and agencies so as to reflect the public interest demand for the highest standards of employee performance and the efficient accomplishment of the operations of the Government.

8. What is your view of the role of a Member of the FLRA?

The role of a Member of the FLRA is a statutory role, set forth in section 7105 of the Statute. In fulfilling those statutory obligations, I view the role of a Member of the FLRA to be an adjudicatory one - - deciding issues that come before the three-member quasi-judicial Authority based upon a careful interpretation of the language of the Statute. An important part of accomplishing this role requires thoughtful consideration of the case presented, existing administrative and or judicial precedent, and Congressional intent as expressed in the Statute.

9. In your view, what are the major challenges currently facing the FLRA and the Authority? What do you plan to do, specifically, to address these challenges?

The major challenge facing the FLRA Authority decisional component of the FLRA is ultimately to administer the Statute by adjudicating cases that come before it fairly, impartially, and expeditiously in a manner that the parties can understand as they seek to apply FLRA decisions in the workplace. Challenges for the FLRA, as an agency, are likely similar to those facing other agencies throughout the Federal government, such as engaging in succession planning to address anticipated retirements, promoting electronic filing, responding to changes in how work is accomplished, and continually promoting professionalism and ethics throughout the workforce as an independent, neutral agency.

10. A January 20, 2006 *Washington Post* article entitled, "Plan for More Labor Boards Prompts Independent Agency to Regroup," cited two unnamed employees who characterized FLRA staff morale as low. How do you believe the FLRA could improve employee morale?

If confirmed, I would promote employee morale by instilling and encouraging a sense of mission in my chief counsel and through my own actions by a focus on serving the parties who come before the Authority and establishing a positive work environment focused on accomplishing the Agency mission for the customer.

11. What will be your long-term priorities as a Member of the FLRA?

If confirmed, I will have two primary long-term priorities. First, I will work ensure that cases that come before the Authority are decided timely. From my reading of the Statute and the agency's regulations, currently, only Representation appeals are processed under a specific timeline. It is my understanding that such cases always are decided within this timeline. Should I be confirmed as a Member, I would seek to work in a collegial manner with the FLRA Chairman and the other Authority Member to institute additional agency timelines for processing the other types of cases that come to the Authority, including exceptions to Arbitration decisions, Negotiability cases, and Unfair Labor Practice cases.

My second long-term priority will be to ensure the quality of the Authority's decisions. As a quasi-judicial entity, I will work to instill in my staff, and, through my dealings with other Authority Member staffs, the importance of sound analysis and clear writing. Authority decisions are the means by which the Authority "provides leadership in establishing policies and guidance in matters under the Statute" (§7105(a)(1)) throughout the Federal labor-management community. Therefore, I believe the final work product must not only be timely, but also must be understandable to the ultimate customer - - agency and labor organization practitioners.

12. Describe your vision of what the relationship should be between the FLRA, the Merit Systems Protection Board, and the Equal Employment Opportunity Commission. In your view, do the current relationships between the FLRA and these agencies reflect your vision? If not, what would you seek to do to change the current relationships?

Congress established each of these three agencies with distinct statutory missions and functions. As I understand each agency's jurisdictions, there is presently only limited jurisdictional overlap among these three agencies. The FLRA, unlike either the EEOC or MSPB, is primarily involved with cases involving labor-management relations whereas EEOC and MSPB are involved with administrative adjudication of cases within the employment law area. Although I am aware that the Subcommittee on the Federal Workforce and Agency Organization of the House Committee on Government Reform recently held a hearing to consider formation of a commission to study the various roles of these agencies, along with the Office of Special Counsel and the Federal Mediation and Conciliation Service, I do not at this time have any basis upon which to state whether changes in the current missions and functions of the agencies are needed.

13. What do you believe is the appropriate role of a Member of the FLRA, and how does that differ from the role of the Chairman? Do you believe Members of the FLRA should have access to all information pertaining to the organization and administration of the FLRA as well as any changes to the FLRA that are under consideration?

Section 7104(b) of the Statute, which spells out the role of the Chairman of the FLRA, provides that "[t]he Chairman is the chief executive and administrative officer of the Authority." In this regard, Congress has established that the activities related to running the organization, are the ultimate responsibility and obligation of the Chairman. This would include the budget, personnel matters, and the like. Therefore, the extent to which the CEO of the organization decides to provide all information or any information pertaining to the organization and administration of the FLRA or any changes under consideration, is, to me, a right solely reserved to the Chairman. Although I would be willing to provide input on administrative or operational matters to the extent I believed I was qualified, I would not expect this to be an integral part of my role as a Member, given the role the Statute clarifies for Authority Members.

The statutory role of Members involves activities related expressly to administering the Statute itself. Authority Members have a role in actions relating to deciding various types of cases, such as exceptions to arbitrator's awards (§7122); resolving issues relating to the duty to bargain in good faith (§7117(c)); and resolving complaints of unfair labor practices (§7118), as examples. In addition, pursuant to §7105(d), the Authority Members become involved in matters relating to appointment of the executive director, administrative law judges, and regional directors; and also the delegation of various authorities to regional directors and administrative law judges in carrying out various functions of processing cases under the Statute. As a Member, in addition to my primary role of deciding cases, it is in these areas that I would expect my input would be sought.

III. Policy Questions

14. The FLRA revised its strategic plan for FY 2004-09 and in doing so reduced the number of strategic goals from four to one. The single goal is to resolve disputes impartially and promptly. Please explain your understanding of this goal, in particular, that part of the goal relating to prompt resolution. What role do you see for yourself in helping achieve this goal? Do you believe FLRA should have any additional goals? If so, please specify what those goals would be and briefly what you believe FLRA should do to achieve them.

I have read the FLRA's current Strategic Plan, which is available on the web-site. As I understand the current plan, the goal expresses the purpose for which Congress established the Agency - - to resolve disputes impartially and timely. In this case, FLRA "disputes" include five types:

- Determining the appropriateness of units for labor organization representation
- Adjudicating exceptions to arbitrator's awards
- Resolving complaints of unfair labor practices
- Resolving impasses, and
- Resolving issues related to the duty to bargain

According to the Statute and agency regulations, the FLRA consists of four distinct program areas that may have a role in processing one or more of these types of disputes (Office of the General Counsel, Office of Administrative Law Judges, Authority decisional component, and Federal Service Impasses Panel). Cases may cross more than one program area from the time the case is filed until finally resolved. For example, unfair labor practice cases begin in the Office of the General Counsel as a charge. If the charge matures to a complaint, the case may move to the Office of Administrative Law Judges for a hearing and decision. If a party then appeals an ALJ decision, the case would move to the Authority for resolution; after which, it may or may ultimately be appealed to the Federal court system. With respect to that part of the goal relating to prompt resolution, I believe the single, agency-wide goal is recognizing the fact that there are different components through which a case may be processed and that all components must be cognizant of the fact that there are parties at the other end awaiting resolution. Regardless of which component the case is in at any point, the component heads and managers within each component must understand that although the FLRA components have different and separate roles with respect to various dispute resolution proceedings, the agency goal must be to continuously improve service to the customer (agencies and labor organizations) and not view the case as belonging to any one component.

In terms of other goals, as I have no first-hand experience with the internal workings of the Agency, it would be premature to comment on whether there should be additional goals. If confirmed, I would examine all case-processing activities related to the Authority decisional component and, where appropriate, pursue changes through the FLRA Chairman.

15. The FLRA's strategic and performance plans give much attention to the timely processing of cases. However, these plans are silent with regard to the quality of case processing and decisions. In your view, must the goal of timely case processing be balanced against the goal of high quality case processing, and, if not, how should the need for timelines be weighted against the need for quality? Do you believe that the quality of case processing and decisions can and should be measured? If so, what should the measures be? Should there be performance goals related to case processing and decision quality? If so, what goals would you recommend? If not, please explain why not.

I do not consider quality and timeliness as independent of each other or inconsistent with each other. For example, the Authority's regulations set a clear timeline of 60 days for Representation cases. To my knowledge, the Authority has never failed to meet this goal and has never been faulted as sacrificing quality to meet this goal. As a result, it seems likely to me that the managers (chief counsels to the Members) have made processing of Representation cases within the required timeline an internal priority among themselves and for their respective staffs. In this regard, I believe it is indeed possible to establish internal employee performance standards related to case processing and decision quality. At this time, however, it would be premature for me to suggest specific goals. If confirmed, I would examine all phases of the Authority's case-processing operations and, where appropriate, pursue changes related to timeliness and or quality.

16. One way to reduce case processing time is to reduce the number of adjudicated cases. Are there opportunities to reduce case filings or to resolve without the need for a decision matters brought to the Authority? What would be the advantages and disadvantages of pursuing those opportunities? Please explain.

It would be premature at this point for me to comment on whether and how to reduce case filings or to resolve without the need for a decision matters brought to the Authority. If confirmed, I would examine all phases of Authority operations and, where appropriate, pursue case-handling changes.

17. There has been increased use of alternative dispute resolution (ADR) to deal with disputes in the federal workplace, including those arising under the Federal Service Labor-Management Relations statute, 5 U.S.C. Chapter 71. Some have pointed to the success of ADR in bringing about interest-based resolutions while reducing the adversarial nature of the process and improving relations between labor and management. Others have said that, although ADR is a useful tool, an emphasis on the use of ADR could create undue pressures to reach settlements. What are your views on the use of ADR to resolve federal workplace disputes?

Congress has recognized the usefulness of ADR as a tool or technique for resolution of workplace disputes for more than 60 years, when it created the Federal Mediation and Conciliation Service (FMCS). More recently, the passage of the *Alternative Dispute Resolution Act*, during the 1990s, requires Federal agencies to incorporate ADR when appropriate. I believe ADR is a tool that can be useful in helping the parties reach a resolution of their immediate dispute and also assist them in developing a better understanding of one another. Because the foundation of effective ADR is the fact that it is a voluntary process, however, I don't believe it is a tool that should be forced on parties. I believe ADR should be an option, but not a requirement.

18. What is your assessment of the current state of Federal labor-management relations? If you believe that improvements can be made, in what areas should there be improvement and how can this be accomplished?

I view the current state of Federal labor-management relations as being stable in some areas, such as non-DoD/DHS agencies and in a state of transition, within DoD/DHS agencies. For the latter, the effect of recent legislation and resulting court action evidence this transition. Whether either side has achieved its objectives remains to be seen; however, the very fact that the issue has encouraged discussion, communication, and a healthy debate, among all stakeholders, is, I believe positive.

19. The Federal Service Labor-Management Relations statute states a Congressional finding that statutory protection of the right of employees to organize and bargain collectively contributes to the effective conduct of public business (5 U.S.C. § 7101(a)). To what extent, and under what circumstances, do you believe that collective bargaining at federal agencies contributes to the effective conduct of public business? To what extent, and under what circumstances, do you believe that the right of federal employees to bargain collectively is, or could be, detrimental to the ability of agencies to fulfill their missions?

Regarding collective bargaining at federal agencies contributing to the effective conduct of public business, I accept this as the finding of the Congress in enacting the Statute. Thus, I consider this to be an appropriate guide to follow in carrying out statutory responsibilities. Section 7101(b) of the Statute provides that its provisions "should be interpreted in a manner consistent with the requirement of an effective and efficient Government." I believe the Authority Members need to give careful consideration to the language of the Statute in its entirety. Because disputes arising from or relating to these matters may come before the Authority in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on this issue specifically.

20. Do you believe that improvements can be made to the Federal Service Labor-Management Relations statute? If so, what improvements can and should be made?

At this point, I am not prepared to identify specific improvement that could or should be made to the Statute. Should I be confirmed, I would examine the interpretations given to the language of the Statute as set forth in current precedent and also court interpretations and, where appropriate, pursue clarification.

21. What kinds of effects, if any, do you believe a blended workforce of federal employee and federal contract personnel is having on federal labor-management relations?

I am aware that some Federal labor organizations are opposed to the increased use of contract employees and that some of the issues raised have included such topics as size of the federal workforce, work schedules, benefits, etc. As a potential Member, I would have no comment on the propriety of such issues or arguments. Additionally, because disputes relating to contracting out have come before the Authority and may come before the Authority decisional component in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

22. The Department of Homeland Security (MAX^{HR}) personnel regulations and the Department of Defense National Security Personnel System regulations propose changes to how labor relations are conducted at those agencies. What are your views on labor

relations changes as proposed? Do you support the DHS and DOD labor relations regulatory provisions as proposed, and do you believe that the model should be extended government-wide?

How or whether the DHS (MAX^{HR}) personnel regulations and the DoD(NSPS) regulations affect labor relations in those agencies or government-wide remains to be seen until the agencies are operating under the respective systems. Clearly many stakeholders and oversight groups (such as GAO) are analyzing and evaluating the models and processes involved. As a potential Member, I would have no comment on the propriety of such issues or arguments. Additionally, because disputes arising from or relating to these matters may come before the Authority decisional component in the future, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

23. On June 27, 2006, the U.S. Court of Appeals for the District of Columbia issued a ruling in *NTEU v. Chertoff*. The Court of Appeals ruled that the Department of Homeland Security was not permitted to use the Federal Labor Relations Authority as an element of its proposed personnel system, MAX^{HR}. Absent this ruling, what do you believe would have been the implications of the ruling on the FLRA in terms of workload and leadership in labor-management relations?

In terms of workload, my understanding is that the FLRA has experienced a downward trend in case submissions in all categories of cases for several years independent of the DHS and DoD proposed personnel systems and this decline has continued. Therefore, notwithstanding the DHS and DoD rulings, I believe FLRA leadership and administrators would be monitoring and adjusting agency resources accordingly. Regardless of the DHS and DoD rulings, however, it is also my understanding that passage of the BRAC legislation may also have an impact on the continuing decline of case filings with the FLRA, as well as having an impact on the location of FLRA customers, as bases relocate and realign. Should I be confirmed, I would expect to continue monitoring workload and to offer my input, as appropriate, as it relates to addressing the Agency's mission and strategic plan.

24. In its June 27, 2006 opinion referenced above, the U.S. Court of Appeals for the District of Columbia found that the new personnel system proposed by the Department of Homeland Security failed to ensure collective bargaining by: (1) reserving to itself the right to supersede existing collective bargaining agreements; and (2) excessively limiting the scope of bargaining to employee-specific personnel matters, thereby eliminating all meaningful bargaining over fundamental working conditions. What are your views on these findings?

The Appellate Court considered the arguments presented in light of the DHS proposed regulations, applied the language of the Statute and rendered an opinion. Issues relating to this matter may come before the Authority in the future, therefore, as a nominee for a position as an Authority Member, it would not be appropriate for me to comment on these issues.

25. In January 2003, the Administrator of the Transportation Security Administration (TSA) issued an order prohibiting federal baggage and passenger screeners from engaging in collective bargaining. The Administrator issued a statement explaining that "mandatory collective bargaining is not compatible with the flexibility required to wage the war against terrorism." The Administrator's statement further explained: "Fighting terrorism

demands a flexible workforce that can rapidly respond to threats," and: "That can mean changes in work assignments and other conditions of employment that are not compatible with the duty to bargain with labor unions." This January 2003 order remains in effect. Do you believe that the need for a flexible workforce that can rapidly respond to threats can be compatible with the duty to bargain with labor unions? Please explain.

In 2003, the FLRA Authority recognized that Congress conferred upon the head of TSA the authority to determine whether collective bargaining is appropriate for the agency's employees. *United States Dep't of Homeland Sec., Border and Transportation Sec. Admin.*, 59 FLRA 423. If confirmed, I would continue to recognize the legislative process and the separation of powers and would apply the law as enacted.

26. Last year the Office of Management and Budget released a draft bill entitled the "Working for America Act," which, if enacted, would make several changes to the Federal Service Labor-Management Relations statute. For each of the following changes: (1) what would be the effect of the provision on the Authority; (2) what would be the effect of the provision on federal employees; and (3) do you believe the provision is desirable?

- a. Section 401(2)(B) of the draft bill would empower the Chairman of the FLRA, "to direct the General Counsel...to submit a matter before...[the General Counsel] to the Authority for appropriate action or to take whatever action is appropriate pursuant to the procedures the Chairman establishes under this paragraph [establishing a process to resolve all matters associated with a bargaining dispute]."

The provision as presented in this context, appears to be focused on efficiencies in case-processing from an agency-wide perspective, rather than changing substantive aspects of Federal labor law. The Office of the General Counsel of the Authority is one of four program components within the FLRA, which also includes the Office of Administrative Law Judges, the Federal Service Impasses Panel, and the Authority decisional component. Such a provision would appear to provide an opportunity for Component Heads to evaluate current processing of cases and explore opportunities for streamlining case-processing.

- b. Section 401(1)(A) of the draft bill would change the definition of a grievance to "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation issued for the purpose of affecting conditions of employment, including determinations regarding an employee's pay, except the exercise of managerial discretion of judgment in such determinations"

This provision, restricting grievances to violations of law, rule, or regulation, issued for the purpose of affecting conditions of employment, appears to be a codification of a case decided more than ten years ago by the U.S. Court of Appeals for the District of Columbia Circuit. *United States Dep't of the Treasury, United States Customs Serv. V. FLRA*, 43 F.3d 682 (D.C.Cir.1994).

- c. Section 401(2)(A) of the draft bill would change the current process for resolving bargaining disputes by requiring the Chairman of the FLRA to "...establish a

single, integrated process to resolve all matters associated with a bargaining dispute."

The provision as presented in this context, appears to be focused on efficiencies in case-processing from an agency-wide perspective, rather than changing substantive aspects of Federal labor law. The Office of the General Counsel of the Authority is one of four program components within the FLRA, which also includes the Office of Administrative Law Judges, the Federal Service Impasses Panel, and the Authority decisional component. Such a provision would appear to provide an opportunity for Component Heads to evaluate current processing of cases and explore opportunities for streamlining case-processing.

- d. Section 401(2)(A) of the draft bill would allow the Chairman of the FLRA to "...in his or her sole discretion call a meeting of the members of the Authority without regard to section 552b," referring to open meetings.

I do not have at this time have any basis upon which to state whether this provision is necessary or desirable.

- e. Section 401(2)(B) of the draft bill would allow the Chairman of the FLRA, rather than the Authority collectively, to "appoint an Executive Director, regional directors, administrative law judges..., and other individuals as he or she may...find necessary."

The provision as presented in this context, appears to be focused on cleaning-up existing statutory ambiguities, rather than changing substantive aspects of Federal labor law. If I were confirmed as a Member of the Authority, such a provision would not negatively impact my role as a Member with respect to case-processing. The provision appears to support existing statutory language and Congressional intent of the FLRA Chairman's role as CEO and chief administrative officer of the agency.

- f. Section 401(2)(E) of the draft bill would prohibit the FLRA from "[imposing] status quo ante remedies in cases in which there has been a finding of violation... where such remedies would adversely impact the agency's or activity's mission or budget, or the public interest."

This provision, as presented in this context, appears to prohibit the FLRA from imposing *status quo ante* (SQA) remedies where an SQA would adversely impact the public interest or an agency's mission or budget. At this time, I do not have any basis upon which to state whether this provision is desirable.

- g. Section 401(3) of the draft bill would change the definition of management rights to "take whatever actions may be necessary to prepare for, practice for, or prevent any emergency; and carry out the agency mission during emergencies."

This provision, as presented in this context, appears to extend management's right as necessary "to prepare for, practice for or prevent" any emergency. Currently, there is no express definition of "emergency" within Chapter 71. Should this provision be enacted, disputes arising from or relating to it may come before the Authority in the future. As a

nominee for a position as an Authority Member, it would not be appropriate for me to comment on whether this provision is desirable.

- h. Section 401(5) of the draft bill would change the duty to bargain as follows "the obligation of any agency or any labor organization to bargain or consult extends to any otherwise negotiable subject only if the effect of the change on the bargaining unit, or that portion of the bargaining unit affected by the change, is foreseeable, substantial, and significant in terms of impact and duration."

With respect to this quoted provision, how would you interpret the term "foreseeable, substantial, and significant"?

Under current law, the obligation to bargain exists whenever a change has "more than a *de minimis* effect on conditions of employment." *Soc. Sec. Admin., Office of Hearings and Appeals, Charleston, S.C.*, 59 FLRA 646 (2004). Should this provision be enacted, disputes arising from or relating to it may come before the Authority in the future. As a nominee for a position as an Authority Member, it would not be appropriate for me to comment on whether this provision is desirable.

27. Since 2002, you've been an Administrative Appeals Judge for the Administrative Review Board in the Department of Labor. Please give the details of your service at the Board and provide the Committee copies of every opinion you wrote or co-wrote. Please also provide a list of dissents you have made while serving as an Administrative Appeals Judge.

I am serving my third two-year term appointment by U. S. Secretary of Labor Elaine Chao, with White House approval. The Administrative Review Board has a chief judge/chair and three judges/board members, a general counsel, currently seven senior staff lawyers, and two staff assistants. The ARB renders final decisions on appeals from recommended decisions of administrative law judges under about 40 private-sector worker-protection statutes, involving: whistleblowers in securities, air, atomic energy, environmental, and motor carrier safety; federal grants to states for job training; child labor; and prevailing wages for federal construction and service contracts, and temporary foreign workers. Following a review of the record from the ALJ and the briefs, the lead panel member and at least one other meet with an assigned staff lawyer and occasionally the general counsel, and decide the case. Appeals from ARB are generally to the U.S. Court of Appeals in Circuit in which case arose. I have authored or co-authored 310 opinions (available at OALJ.dol.gov). I have written two concurring opinions, but no dissents. Following discussion with Senate staff, I have selected thirty-two opinions for review based upon their significance, representative nature, and/or my high degree of involvement.

27. Under section 7116(a)(4) of title 5, it is an unfair labor practice to discipline an employee for filing a complaint or giving testimony on matters under chapter 71 of title 5. This provision is used, among other things, to protect employees against retaliation for whistleblowing.

During your tenure at the Department of Labor, it appears that many of the cases you worked on were whistleblower case adjudications. Your decisions at the Department of Labor may suggest how you would handle unfair labor practice charges relating to whistleblowers under section 7116(a)(4).

- a. In the last few years, what percentage of cases did the Board reverse ALJ decisions that found for whistleblowers? In how many of those cases did you join in and in how many of those cases did you dissent from the decisions?

I consider each case on its merits and we do not maintain those kinds of statistics. I have not written a dissent in any of our cases.

- b. In the last few years, what percentage of whistleblower cases did the Board reverse ALJ decisions that found for employers? In how many of those cases did you join in and in how many of those cases did you dissent from the decisions?

I consider each case on its merits and we do not maintain those kinds of statistics. I have not written a dissent in any of our cases.

- c. What do you believe is the purpose of whistleblower protection statutes?

Whistleblower statutes are designed to protect workers and serve the public interest by providing remedies for workers who are retaliated against for raising matters of public concern, e.g., safety, waste, fraud and abuse. The federal whistleblower statutes which fall under our jurisdiction were enacted because Congress found that state laws were inadequate or not uniform, and that workers engaged in private-sector jobs involving, for example, interstate commerce in air safety and trucking, should have a federal remedy if they are retaliated against for whistleblowing.

- d. Generally, please explain your views of employee disclosure rights and any comments you would like to make regarding your record on whistleblower adjudications at the Board.

I decide each case on its merits, scrupulously applying the law as it is written and established to the facts as found. I note that some of the whistleblower laws we have jurisdiction over provide greater protection for workers than some other federal or state laws or First Amendment decisions in the following ways: (1) The whistleblower does not have to be the common law employee of the respondent, but an employee over whom the respondent employer exercises control. (2) The whistleblower does not necessarily have to make a "disclosure" outside the chain of command, but, for example, may be protected for making a safety complaint to a supervisor. (3) The whistleblower need not prove tangible job consequences; under some of the implementing regulations, a threat, intimidation, or harassment is enough to establish retaliation. (4) The whistleblower need only prove that his/her protected activity was a factor in the adverse employment decision. And (5) the employer must then prove by clear and convincing evidence that it would have made the same employment decision without the whistleblowing activity.

28. What efforts did you undertake to improve case review processes at the Administrative Review Board, and to what extent might those efforts be applicable at the FLRA?

Our chief judge/chair is responsible for management, but I have assisted to the extent requested. For example, I rewrote the performance standards for staff lawyers to reflect case review and analysis, quality, productivity, and collegiality. An increased emphasis on production has reduced the backlog and reduced the average time for disposing of cases, thereby benefiting the parties who appear

before us. If confirmed, I will bring this experience to my position as a Member of the Authority decisional component.

IV. Relations with Congress

29. Do you agree without reservation to respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress, if confirmed?

Yes.

30. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress, if confirmed?

Yes.

31. How do you plan to communicate and work with Congress in carrying out the FLRA's responsibilities?

If confirmed, I will respond timely to any reasonable request for information from any duly-constituted committee of Congress and will respond to any reasonable request or summons to appear and testify before any duly constituted committee of the Congress.

V. Assistance

Are these answers your own? Have you consulted with the FLRA or any other interested parties? If so, please indicate which entities.

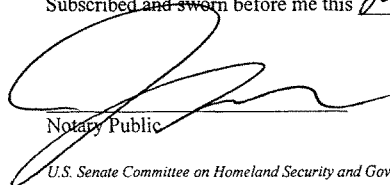
Each answer is my own, however, I have consulted with FLRA staff to obtain helpful information of a technical or background nature.

AFFIDAVIT

I, WAYNE C. BEYER, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Wayne C. Beyer

Subscribed and sworn before me this 24 day of July, 2006.


Notary Public

JOHN W. FEENEY
Notary Public District of Columbia
My Commission Expires February 14, 2009



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

June 15, 2006

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Wayne C. Beyer, who has been nominated by President Bush for the position of Member of the Federal Labor Relations Authority.

We have reviewed the report and have also obtained advice from the Federal Labor Relations Authority concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Beyer is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,
A handwritten signature in black ink, appearing to read "Robert I. Cusick".
Robert I. Cusick
Director

Enclosure

Congress of the United States
Washington, DC 20515

September 11, 2006

Senator Susan Collins
Chairwoman
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Senator Joseph Lieberman
Ranking Member
Senate Committee on Homeland Security
and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Senator George Voinovich
Chairman
Subcommittee on Oversight of Government
Management, the Federal Workforce,
and the District of Columbia
442 Senate Hart Building
Washington, DC 20510

Senator Daniel Akaka
Ranking Member
Subcommittee on Oversight of Government
Management, the Federal Workforce,
and the District of Columbia
442 Senate Hart Building
Washington, DC 20510

Dear Senators Collins, Lieberman, Voinovich and Akaka:

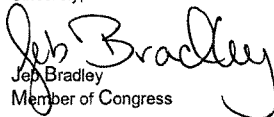
We are writing to offer our support for the nomination of Wayne Beyer to the Federal Labor Relations Authority.

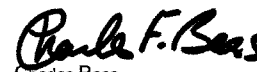
Wayne's common sense work ethic was shaped by his New Hampshire roots, his extensive education and longstanding public service and legal career. In addition to fifteen years of private practice in New Hampshire, he has worked for two Members of Congress, as Chief of Staff and later Principal Deputy General Counsel of the U.S. General Services Administration, and Senior Litigation Counsel for the District of Columbia Government. His present position as Administrative Appeals Judge with the Department of Labor is another example of the excellence Wayne has achieved in his work and valuable preparation for the FLRA.

Because his time was spent working in New Hampshire and Washington, Wayne will bring to the FLRA a unique perspective, and we believe that this perspective will ably guide him. In his career and his personal endeavors, Wayne has demonstrated that he commands the expertise necessary to be of a great benefit to those with whom he works. We are confident that he will afford this same benefit to the FLRA.

Judge Wayne Beyer is accomplished, knowledgeable and, most importantly, respected. We strongly urge you to join us in supporting his nomination to the FLRA.

Sincerely,


Jeb Bradley
Member of Congress


Charles Bass
Member of Congress

cc: Members of the Senate Committee on Homeland Security and Governmental Affairs

**Prepared Statement of Stephen T. Conboy
Nominee to be U.S. Marshal
Superior Court of the District of Columbia
September 13, 2006**

Thank you very much Senator Voinovich. I would also like to thank Eleanor Norton-Holmes for introducing me and for her very kind words. I am truly humbled. I would like to thank our President and Commander in Chief for nominating me to this position; and, to the Attorney General for appointing me to be the Acting Marshal, a position that I have held since January 4, 2004, and for his confidence in me for this nomination. I would like to recognize and express my sincere appreciation to Mayor Anthony Williams for recommending me to the White House for this position. In addition, I would like to recognize several of my supporters. First is my biggest supporter, my wife of 30 years, Elizabeth. She is a teacher with the Fairfax County Public Schools and has spent the past two years earning a second Masters Degree in Education with Virginia Tech, and the immediate past year as an Assistant Principal Intern at Lorton Station. I am most proud of her. Our two daughters, Anna and Sarah could not be here today. I would also like to introduce the Honorable Chief Judge Rufus G. King III, Honorable Judge Gregory Jackson, Honorable Kenneth Wainstein, United States Attorney for the District of Columbia, Honorable Harley Lapin, Director, Bureau of Prisons, Honorable Edward O'Reilly, U.S. Parole

Commission, Honorable Peter Elliot, United States Marshal for the Northern District of Ohio, Honorable George Walsh, United States Marshal for the District of Columbia, Ed Reiskin, Deputy Mayor for Public Safety, Charles Ramsey, Chief of Police, Metropolitan Police Department, Chief Dwight Pettiford, United States Park Police, Chief Joseph Trindal, Regional Director, Federal Protective Service, Homeland Security, Nancy Ware, Executive Director of the CJCC, Paul Quander, Director of CSOSA, Susan Schafer, Director of Pretrial Services Agency, Avis Buchanan, Director of Public Defender Service, Vincent Schiraldi, Director of Youth Rehabilitation Services, Rainey Ransom, Special Counsel to the Chief Judge, Superior Court. In closing, I would like to add that as a career Deputy U.S. Marshal with twenty-years of experience with the United States Marshals Service, that I am the most proud of being associated with such a fine cadre of brave and dedicated men and women as I have the privilege of working with in Superior Court. The District of Columbia can be proud of the tremendous service that they provide to both this community and to their Nation each and every day. I look forward to responding to whatever questions this Committee may have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES
A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)
Stephen Thomas Conboy
2. **Position to which nominated:**
United States Marshal for the Superior Court for the District of Columbia
3. **Date of nomination:**
January 24, 2005
4. **Address:** (List current place of residence and office addresses.)

Office
500 Indiana Ave. N.W. C-250
Washington, D.C. 20001
5. **Date and place of birth:**
February 17, 1956
Boston, Massachusetts
6. **Marital status:** (Include maiden name of wife or husband's name.)
Married.
Elizabeth Jane Conboy
Maiden name is Karalis
7. **Names and ages of children:**
8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.
Middlesex College, 1975 – 1977, A.S. Degree in Criminal Justice, granted on May 27, 1977
National University, 1979 – 1981, B.S. Degree in Public Administration, granted on April 26, 1981
National University, 1981 – 1982, M.S. Degree in Education, granted on June 17, 1982

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

Military Service:
United States Marine Corps 1975-1982, Staff Sergeant, Honorably Discharged

United States Marshals Service:
Deputy U.S. Marshal, Los Angeles, California 1983-1988
Inspector, Sacramento, California 1988-1991
Senior Inspector, San Francisco, California 1991-1994
Supervisory Deputy U.S. Marshal, San Francisco, California 1994-1996
Supervisory Deputy U.S. Marshal, Wilmington, Delaware 1996-2000
Chief Inspector, Arlington, Virginia 2000-2002
Chief Deputy U.S. Marshal, Sacramento, California 2002-2003
Assistant Director, Interpol, Washington, D.C. 2003-2004
Acting United States Marshal for the Superior Court for the District of Columbia 2004-present
10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.
11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None.
12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

Special Operations Group Association, Member since 1983
Federal Law Enforcement Officers Association, Member since 1989
13. **Political affiliations and activities:**
 - (a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None.
 - (b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

None.
 - (c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$50 or more for the past 5 years.

None.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Marine Corps Good Conduct Medal
Marine Corps Life Saving Commendation
Marshals Service Superior Achievement Award

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None.

17. **Selection:**

- (a) Do you know why you were chosen for this nomination by the President?

I am the candidate which Mayor Williams' search committee recommended to the White House.

- (b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I am a command level law enforcement officer with twenty-two years of progressive leadership experience within the ranks of the United States Marshals Service. In addition, I have held the position for which I have been nominated for, in an acting capacity for the past twelve months, having made vast improvements in both the delivery of customer services and the fostering of strong relationships with civic, business, and government leaders in the District of Columbia.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

No. I have had a continuing relationship with my present employer since my nomination, and I will have the need to maintain a connection if confirmed.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No.

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

Pursuant to Civil Service regulations, I am eligible to return to "career status" with my present employer.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

None.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.
2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

None.
3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.
2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.
3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I was a co-defendant in a civil lawsuit brought by a prisoner in U.S. District Court, District of Delaware, Civil Docket for Case #00-CV-345. At the time of the action giving rise to this lawsuit, I was a Supervisory Deputy U.S. Marshal in the District of Delaware. An order by the Honorable Sue L. Robinson, U.S. District Court Judge, on November 7, 2002, dismissed with prejudice all claims brought against both myself, and co-defendant Deputy U.S. Marshal Brian Flick.
4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None of which I am aware.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Steve Conboy being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 11th day of FEBRUARY, 2005

Steve Conboy

Nancy Harley-Winter
Notary Public

My Commission Expires Nov 14, 2006

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Stephen Thomas Conboy to be
United States Marshal for the Superior Court of the District of Columbia**

I. Nomination Process and Conflicts of Interest

1. Why do you believe the President nominated you to serve as U.S. Marshal for the Superior Court of the District of Columbia?

My nomination was the result of the administration's consultation with District of Columbia officials who recommended me for the position.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. What specific background and experience affirmatively qualifies you to be U.S. Marshal?

I have twenty-three years of progressive experience ranging from Deputy U.S. Marshal through Chief Deputy U.S. Marshal in a number of challenging environments, both at the Field and Headquarters levels. I have served in positions within communities that have demanded an individual who was not only a skilled law enforcement official, but one who possessed the spirit and political acumen to work cooperatively in bringing change, making a positive impact, and achieving goals.

4. Have you made any commitments with respect to the policies and principles you will attempt to implement as U.S. Marshal? If so, what are they and to whom have the commitments been made?

No.

5. If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.

None that I am aware of.

II. Role and Responsibilities of United States Marshal

6. What is your view of the role of U.S. Marshal for the Superior Court of the District of Columbia?

I would strive to incorporate the vision outlined in the Strategic Plan of the U.S. Marshals Service while providing the highest level of customer service to the Courts and the public.

7. What do you see as the major criminal problem facing the District of Columbia?

The number of violent crimes committed as the result of the use and trafficking of illegal drugs.

8. How is your role as Marshal of the Superior Court different, if at all, from the role of other U.S. Marshals?

In addition to the responsibilities of a U.S. Marshal in any Federal District, I have additional responsibilities as the defacto Sheriff for the District of Columbia. This involves executing Court orders, such as serving process (evictions, subpoenas, summons, etc.) and transporting prisoners arrested by the Metropolitan Police Department and also those in the custody of the D.C. Department of Corrections. I also serve the needs of two chief judges at the Moultrie Building, Chief Judge King III of the D.C. Superior Court, and Chief Judge Washington of the D.C. Court of Appeals. Together, they serve on the Joint Security Committee whereas in Federal Districts there is only one Chief District Judge that serves in that capacity.

9. In your view, what are the major internal and external challenges facing U.S. Marshals Service's D.C. Superior Court office? As Acting U.S. Marshal, what have you done to address these challenges? If confirmed, what additional specific steps do you plan to take to address these challenges?

Internal - executing the daily responsibilities of this office safely and efficiently while consistently understaffed.

External - conducting business in workspace owned and operated by the D.C. Government. Many Federal Safety Guidelines and Facilities Management Plans are not enforced or applicable in this space. USMS Central Courthouse Management Group Publication 64 Space Requirements are not met in this facility.

I have worked diligently with USMS Human Resources Division to increase both operational and administrative staff. I have also worked closely with the Court's

Executive Office and the USMS Central Courthouse Management Group to obtain additional funding to address our space deficiencies.

I would continue current short-term and long-term plans with additional resolve.

10. As Acting U.S. Marshal, what actions have you taken to ensure there is regular and effective communication between you and U.S. Marshals Service (USMS) staff on relevant and/or important issues facing your office?

I host regular district "town hall" meetings in an open forum where questions may be posed and ideas expressed. I have an open door policy for those that wish to share their thoughts, opinions, comments, and criticisms. I actively engage U.S. Marshals Service personnel on issues germane to Superior Court. I actively participate on Headquarters steering committees involving national issues with Marshals Service-wide impact.

11. During your tenure as U.S. Marshal for the Superior Court of the District of Columbia, what key performance goals do you want to accomplish? What goals do you believe you have already accomplished as Acting U.S. Marshal?

I would like to provide adequate work space commensurate with the duties and responsibilities of district personnel so that they may execute their duties in a safe and secure manner.

I would ensure that those prisoners in the custody of the U.S. Marshals Service were transported and housed securely to protect the citizens of the District of Columbia. The office needs to address the backlog of warrants for violent offenders, making the streets of the District of Columbia a safer place to work and live. As the Acting U.S. Marshal, I have reduced the number of physical assaults upon USMS personnel by prisoners and the resulting injuries; established a Judicial Security Unit within the office to investigate threats on the judiciary and other government employees; instituted measures that allow for the production of prisoners before the Court in a safe and timely manner and promoted, and continue to provide, a work environment free from discrimination.

12. Do you believe that you have had sufficient resources to fulfill your mission while serving as Acting U.S. Marshal? What resource limitations, if any, do you think need to be addressed?

We consistently have vacancies based upon our current personnel resource allocation. This is the primary resource limitation that we face and I will continue to address this shortage. In addition, the work space provided for our use by the D.C. Courts is woefully inadequate. I will also continue efforts to obtain additional space to meet our operational and administrative needs.

13. If confirmed, is it your intention to make any changes to the management team within the USMS's D.C. Superior Court office?

I have strived to build a strong management team that is representative of the diversity of our work force and I believe I have met that responsibility. The management team is currently comprised of males and females from various racial and ethnic backgrounds. They possess the knowledge, skills, and abilities necessary to provide effective leadership at D.C. Superior Court. It is my intention to keep this management team in place.

14. Individuals nominated to serve as judges of the District of Columbia Court of Appeals and the District of Columbia Superior Court are required to have lived in the District of Columbia for five years prior to their nomination. According to the District of Columbia Superior Court website, the Superior Court exists "to serve the community." As Acting U.S. Marshal for the Superior Court of the District of Columbia, what steps have you taken to help ensure that you have an understanding of the needs of the community that you serve?

I am a principal member of the Criminal Justice Coordinating Committee and Chairman of the Warrant Sub-committee. In these roles I am confronted with the needs and concerns of the community as they relate to criminal activity and the resulting law enforcement response. I regularly attend the Law Enforcement Executive Task Force meetings chaired by the U.S. Attorney for the District of Columbia. Representatives from multiple law enforcement agencies attend these meetings and matters involving the needs of the citizens of the District of Columbia are addressed.

III. Policy Questions

Coordination

15. The D.C. criminal justice system involves a unique mix of agencies, including D.C. and federal agencies and private organizations. How will you, as U.S. Marshal for the D.C. Superior Court, ensure that you are coordinating with these other criminal justice components in multi agency local area task forces and initiatives, fugitive investigations, and with respect to the integration of information technology systems needed for case processing? In what ways has interagency coordination been hindered, and in what ways can such coordination be improved? What participation, if any, have you had in the D.C. Criminal Justice Coordination Council (CJCC)? Do you believe the CJCC is an effective forum for interagency coordination? If not, why not?

I will continue my efforts to obtain and implement an electronic prisoner tracking system that integrates the databases of the Metropolitan Police Department, the U.S. Attorney's Office, the Department of Corrections, and the D.C. Courts. This would allow the

consolidation of existing databases and promote a dramatic increase in prisoner tracking efficiency and accountability. A private vendor has provided a cost estimate and I am working with the CJCC to provide funding for this initiative.

Each agency involved in the current process has an independent tracking system which does not promote the real-time exchange of pertinent prisoner information. A processing/tracking system where each agency inputs their pertinent data, which then can be shared among all agencies, would greatly improve interoperability between the criminal justice agencies operating within the District of Columbia.

I am a principal member of the Criminal Justice Coordinating Committee and Chairman of the Warrant Sub-committee. In these roles I am confronted with the needs and concerns of the community as they relate to criminal activity and the resulting law enforcement response.

I feel the CJCC is a very effective forum for addressing the law enforcement needs of the community. Those who attend the meetings have the authority and responsibility to take the initiative in developing solutions to our community's law enforcement needs.

16. The U.S. Court of Appeals for the Armed Forces is also located in Judiciary Square. Representatives of that court have been actively working with the D.C. courts in coordinating their security needs in Judiciary Square. How have you been involved, if at all, in this coordination? Are there ways in which coordination can be improved? If so, how?

I am actively involved in the allocation of resources involving Court Security Officers and the background investigations that are necessary for their employment. Court of Appeals for the Armed Forces' security needs are evaluated as a component of the entire D.C. Court Complex's Court Security contract. Although I cannot address the level of coordination between the Court of Appeals for the Armed Forces and the Executive Office (which is the office responsible for allocating security resources to court buildings), I feel the level of coordination between the U.S. Marshals Service and the Executive Office is very good; and although there is always room to improve, our level of cooperation is very effective.

17. On July 14, 2004, the D.C. Department of Corrections (DOC) announced that it had, in partnership with the USMS, entered into an intergovernmental agreement transferring primary responsibility from the USMS to the DOC for transportation of all DOC prisoners scheduled for appearances at the Superior Court. You are quoted in the DOC press release as saying that, "this transportation agreement will enhance the Marshals' ability to commit more staffing to provide greater security at the DC Superior Court as well as making the community safer by allowing more Deputy US Marshals to be out on the street arresting violent offenders with outstanding warrants." How well is this arrangement working? What, if any, problems have you encountered with this arrangement and what steps have you taken to address such problems? Has this arrangement resulted in the ability of the USMS to more effectively pursue and apprehend

violent offenders with outstanding warrants?

The results of the Intergovernmental Agreement (IGA) have been excellent. As a result of the implementation of the IGA for the transportation of Department of Correction's prisoners, Deputy U.S. Marshals and Detention Enforcement Officers previously assigned to transportation duties are now available to staff the cellblock, greatly enhancing overall safety and security for judicial officers, employees of the U.S. Marshals Service, employees of the D.C. Court Complex, citizens visiting the courthouse, and prisoners. In addition, this has allowed criminal investigators to remain focused on their primary missions of fugitive, threat, and background investigations. This has also resulted in the rotation of several district criminal investigators to the Capital Area Regional Fugitive Task Force, which concentrates on the apprehension of violent fugitives.

Technology

18. While serving at the Superior Court what have you done to use technology to support the USMS's mission? Based on your experience, what role do you believe technology should play?

I have worked with Information Technology Services (ITS) at the Headquarters level to obtain wireless air cards for access to criminal databases in an effort to enhance the ability of criminal investigators to utilize available electronic resources to conduct their investigations. I have obtained digital senders to enhance the interoffice exchange of documents. I have obtained Blackberry's for my management team to promote and improve internal communications. I have provided cell phones to our criminal investigators to assist in their ability to communicate effectively in furtherance of their criminal investigations.

Personnel

19. What do you see as the workforce needs for the USMS's D.C. Superior Court office, considering factors such as age, attrition rates, diversity, and skills imbalance? Have you as Acting U.S. Marshal found it difficult to recruit and retain workers? If so, why?

I have considered the factors cited above and feel they are addressed among the current staffing level. Unfortunately, we have been unable to reach our allocated staffing level due to the lack of new deputies arriving from the training academy. The current staff demonstrates a wide variety of diversity.

It has been difficult to maintain our existing level of staffing due to promotions, lateral transfers to other offices, and what are anticipated levels of attrition.

20. How would you characterize the training provided to employees of the USMS's D.C. Superior Court office? As Acting U.S. Marshal, what steps have you taken to ensure that Detention Enforcement Officers are afforded training opportunities, including hands-on training at the Federal Law Enforcement Training Center?

The level of training given to the employees of the USMS's D.C. Superior Court is exactly the same as that for an employee at any other office of the U.S. Marshals Service. The basic training occurs at the Federal Law Enforcement Training Center (FLETC), along with regularly scheduled in-service training. Local training is provided dependent on available resources such as manpower, funding, and court scheduling. FLETC, in conjunction with Human Resources at Headquarters, selects, schedules and provides funds for Detention Enforcement Officer training. It has been my objective to facilitate training opportunities for all job series employees so that they may further their professional development. Due to the low numbers of Detention Enforcement Officers in the U.S. Marshals Service nationwide, training provided by FLETC does not occur at the same intervals as it does for the deputies and criminal investigators.

21. The USMS response to the terrorist attacks of September 11, 2001, was a comprehensive operation involving the majority of USMS districts, including DC Superior Court of the District of Columbia. The USMS continues to detail deputies from districts on temporary duty assignments based on mission needs. In 2001, there were media reports that this trend affected the USMS's D.C. Superior Court office (see "Marshal Shortage Slows Superior Court," *Washington Post*, October 21, 2001). In response to a written question during his confirmation process, the former U.S. Marshal for the Superior Court, Todd Dillard, noted that there was a significant shortage of personnel in the office and that he thought the situation in the Superior Court's office was more significant because of the types and numbers of violent offenders the office handles. How have these temporary assignments affected the USMS's D.C. Superior Court office? Do you believe you have sufficient staff to effectively carry out the mission of the office? What is your current staffing level at the courthouse?

The USMS response to the terrorist attacks of September 11, 2001, was a comprehensive operation involving the majority of USMS districts, including D.C. Superior Court. Further, the USMS responded with multi-level initiatives:

Within the USMS Headquarters, operations centered on establishing a 24/7 Emergency Operations Center; coordinating special air Justice Prisoner and Alien Transportation (JPATS) missions to transport approximately 100 USMS deputies and more than 300 INS agents, plus equipment to key locations nation-wide; providing more than 75 deputies to FBI field offices to assist in investigating terrorist leads, and more than 60 deputies to the Joint Terrorism Task Forces; and, provided 24/7 support to the FBI's Strategic Information Operation Center (SIOC) in Washington, D.C.

In regard to New York City, USMS personnel of the Eastern and Southern Districts of New York and the District of New Jersey provided on-site assistance at Ground Zero; a team of nine deputies from the USMS Electronic Surveillance Unit assisted with rescue and recovery at Ground Zero; and, a protective detail of deputies was provided for the FEMA Director, as well as additional security and protective details were provided for multiple FEMA missions.

At the Pentagon, the USMS assisted in securing the crime scene area with eight deputies from the Special Operations Group (SOG) and 16 deputies from D.C. Superior Court.

And, at 18 major airports across the country, the USMS deployed more than 300 deputies, including 35 deputy recruits from the Training Academy at Glynnco, Georgia, to provide security.

It is important to note that during the tumultuous aftermath of 9/11, deputies were generally not "reassigned" but "detailed." Deputies were in a temporary duty status, not a permanent reassignment. Although this detailing no longer occurs at the massive level it did after 9/11, the USMS still details deputies from districts on temporary duty assignments based on mission needs. All 94 USMS districts are subject to supporting these special assignments.

D.C. Superior Court staff is currently able to accomplish its assigned missions although its operational strength fluctuates due to TDY assignments, operational training, promotions, transfers and separations. Like other USMS districts, these shortfalls are managed by the temporary employment of individuals who are required to meet specific USMS law enforcement qualifications. The District has an authorized strength of 201 personnel. We currently have vacancies in various stages of the recruitment/hiring process, awaiting completion of a background investigation, or in training classes.

22. The USMS is charged with not only protecting judicial personnel, but also fugitive investigations, witness security, prisoner services, asset forfeiture, service of court process, and special operations and programs. Specifically regarding the USMS's D.C. Superior Court office, how has the workload been distributed in the office? Please provide a breakdown of staff by area. Do you believe there is a need to restructure the workforce or distribution of assignments?

Criminal Investigators are primarily responsible for the apprehension of fugitives, threat investigations, and background investigations. Deputy United States Marshals are primarily responsible for judicial protection, prisoner production, and prisoner transportation. Detention Enforcement Officers are primarily responsible for the receipt and processing of prisoners, security within the adult cellblock, and the overall operations of the juvenile cellblock. I believe the current distribution of responsibilities is appropriate for each job series. The position descriptions for each job series is the

determinant in their assignment and level of responsibility. An influx of personnel from FLETC filling our 42 existing vacancies would greatly increase the opportunities for employees to participate in activities beyond their primary responsibilities.

23. The USMS uses contract workers as Court Services Officers (CSOs), who are deputized to have full law enforcement authority and who aid in courthouse security. How many CSOs are currently used by the U.S. Marshal of the Superior Court of the District of Columbia? Do you believe the CSOs are appropriately and adequately trained? How does the USMS ensure that the CSOs meet the performance expectations of the Superior Court of the District of Columbia?

Approximately 105 CSOs are assigned to the D.C. Courts' Complex. They have been provided adequate levels of training that meet the requirements set forth under the contract. The site supervisor and USMS Contracting Officer's Technical Representative meet regularly to discuss performance issues involving the contract. I also attend a monthly meeting of the Courthouse Security Committee when all members have the opportunity to discuss concerns involving the performance level of the CSOs assigned to the D.C. Courts' Complex.

24. What steps have you taken to ensure compliance and understanding of the Equal Employment Opportunity Act? Do you believe that duty and training assignments should be made in order to provide equal opportunity to all, and, if so, what specific steps have you taken as Acting Marshal in accordance with this belief?

My first official act upon arriving at D.C. Superior Court was to issue an EEO statement in which I re-affirmed my personal commitment, and the commitment of my management team, to a workplace free from discrimination. Posters are prominently displayed in accordance with our national EEO policy. I discuss EEO issues with members of my management team and utilize their front-line knowledge of current issues occurring within the district.

Equal opportunity is provided to all employees at the D.C. Superior Court. All decisions involving opportunities for professional development, special assignments, overtime, rotations among the various operational sections, etc., are considered carefully to insure compliance with the spirit of our EEO policy.

25. On January 24, 2005 several Detention Employment Officers (DEO) that work at the Superior Court of the District of Columbia filed discrimination complaints against the USMS. These complainants, who are African American, alleged that they were receiving disparate treatment in their ability to work overtime hours, in the terms and conditions of their employment, and promotional opportunities, among other things.

- a. What is your understanding of the circumstances that gave rise to the DEOs' complaints? Do you believe that there has been racial discrimination in the availability of overtime work, promotional opportunities or other terms and conditions of employment in USMS's D.C. Superior Court office?

Upon assuming responsibility for the USMS's Superior Court office, I performed a careful and methodical analysis of the workforce. I determined that an increase in oversight should be placed on all employees assigned to work the receipt and processing of prisoners in the cellblock. This additional oversight was necessary to address performance issues. In no way was race a factor in this decision.

- b. What, if anything, have you done, to address the concerns expressed by the DEOs?

The concerns expressed by the Detention Enforcement Officers mirror those concerns of other job series employees at the D.C. Superior Court. All employees are concerned about the ability to generate overtime, to have access to adequate break rooms and locker facilities, and to participate in the merit promotion process. I have worked closely with our Headquarters and the Court to address these issues for all employees. These very same concerns and conditions existed dating back to the early 1990s, and I am confident that we are currently affecting improvement in each of these areas.

- c. What is the current status of these complaints? To your knowledge, have any additional legal actions been taken with respect to these allegations?

To the best of my knowledge, one complainant's case is before U.S. District Court while the remaining cases are before the Equal Employment Opportunity Commission. No known additional legal actions have been taken.

- d. If confirmed, what steps will you take to prevent future discrimination complaints?

I will continue to work tirelessly in my dedication to the principles of Equal Employment Opportunity and the spirit in which it was written.

- e. As Acting U.S. Marshal, what actions have you taken to improve employee morale in light of the January 24, 2005 complaint?

It should be noted that these same conditions brought to light in the complaint submitted by the Detention Enforcement Officers in 2005 existed long before my arrival. I have fought for additional resources from Headquarters, impressed upon

Human Resources staff and the Training Academy the need for additional personnel, maintained an open line of communication, including conducting "town hall" meetings where all employees may express their comments and concerns, and provided the technical and financial resources, including health and safety equipment, to safely and efficiently complete the missions of the Marshals Service at D.C. Superior Court.

26. According to information received from the Department of Justice, as of May 2005, there were five complaints then pending with the FBI concerning abuse relating to prisoners in the custody of the USMS's D.C. Superior Court office. On June 15, 2005, the Committee wrote to the Department of Justice requesting records relating to claims of prisoner abuse under active investigation by the Federal Bureau of Investigation (FBI) as well as the United States Marshals Service Office of Internal Affairs. The Justice Department has thus far declined to provide the Committee with the requested records.

- a. Please describe the nature of the allegations under investigation by the FBI. What is the current status of the investigation(s)? What findings, including preliminary or threshold findings, if any, have been made thus far?

My understanding is that several allegations of prisoner mistreatment have been referred for investigation. Management in this office is apprised of the opening of a case and the general type of case it is, but information from the FBI is not shared with us.

- b. Have these investigation(s) concluded?

I have no knowledge as to the current status of these cases.

- c. What have you been told about these investigations?

I have not been provided information.

- d. Has the FBI opened any additional investigations of prisoner abuse complaints in the USMS's D.C. Superior Court office since May 2005? If so, for each such investigation, please describe the nature of the allegations, the current status of the investigation, and any findings, conclusions or dispositions reached.

Not to my knowledge.

- e. Do you believe that the USMS's D.C. Superior Court office has a problem with prisoner abuse?

No.

- f. In the absence of completed investigations, what steps, if any, have you taken to reduce the number of claims of prisoner abuse, assaults, and/or altercations?

I have worked with the Courts to adopt a policy allowing for the application of leg restraints while the prisoners are in custody at D.C. Superior Court. This has dramatically reduced the number of altercations between prisoners, assaults on Marshals Service staff, and the ensuing allegations of prisoner abuse.

- g. Do you believe these steps have been successful in reducing prisoner abuse, assaults, and/or altercations, as well as claims thereof?

Yes.

- h. Please describe your approach to dealing with reports of prisoner abuse.

From my very first day in this office, I have insisted on full disclosure and reporting of all incidents regardless of their nature. All incidents are documented and allegations forwarded to the Office of Internal Investigations for investigation.

- i. According to information supplied by the Department of Justice and the USMS, of the 133 Use of Force Reports submitted by all USMS offices in FY04, 37 were submitted by the D.C. Superior Court office (34 of these were submitted after your tenure as U.S. Marshal began in February 2004, although some of these may have involved earlier incidents); in the first four months of FY05, 11 of the 70 Reports filed by all USMS offices were submitted by the D.C. Superior Court office. In FY03, one of the 41 Use of Force Reports was submitted by the D.C. Superior Court Office. In your view, what accounts for the increase from FY03 in Use of Force Reports submitted by the D.C. Superior Court office, both in absolute terms and as a proportion of the reports submitted nationally?

My policy of full disclosure requires that all incidents involving altercations with prisoners will be reported. Any increase would result from this policy.

27. The Committee has heard from several employees of the USMS's D.C. Superior Court office who alleged that they contracted staph infections in 2005. As Acting U.S. Marshal, what, if any, steps did you take in response to this situation? What measures, if any, did you take to determine whether the infections were workplace-related?

Experts in dealing with medical issues were contacted to include the U.S. Marshals Service Office of Medical Programs, Public Health Service, and Superior Court Health Unit. They provided medical insight focusing on the education and prevention of staph

infections. Research conducted by professionals in this field of study has concluded that staph infections are most prevalent in hospitals, prisons, and fitness facilities. Due to the large number of employees who utilize the fitness facilities in the vicinity of the courthouse, the medical professionals were unable to determine the source of the infection. The Centers for Disease Control and the local Health Department were also notified. Despite the unknown source, I was able to convince the Central Courthouse Management Group at Headquarters of the need for additional personal protection equipment at D.C. Superior Court. Additional supplies of equipment were procured and provided to employees, such as uniforms, masks, gloves, anti-bacterial soaps, etc. and an agreement was reached with the Courts to have additional antiseptic measures instituted in the regular cleaning of the cellblocks.

28. As Acting U.S. Marshal, how frequently have you held Town Hall meetings with your operational staff?

They are held as needed to respond to the concerns raised by the Court, the citizens whom we serve, the union, employees, and/or management. At times they have been at monthly intervals and other times I have gone several months between town hall meetings.

Judicial and Courthouse Security

29. The U.S. Marshal is charged with the protection of judicial officials, including ensuring proper security of judicial buildings. The District of Columbia courts have been undergoing an expansion in order to address new space requirements. The expansion includes the renovation and utilization of other buildings within Judiciary Square, including the Old Courthouse.

- a. What is your role in this process?

I rely upon the expertise of the Court Security Officer Contracting Officer's Technical Representative, in consultation with the Executive Office, to provide adequate staffing recommendations. The Executive Office has the decision making authority in allocating Court Security Officers within D.C. Courts' Complex buildings. My role is that of a consultant and advisor.

- b. Since becoming Acting U.S. Marshal, what, if any, involvement have you had in the development of the Courts' master plan, which includes proposed physical security enhancements, for Judiciary Square? What involvement do you envision you will have, if you are confirmed?

I have attended meetings in which I have provided security recommendations. I have discussed security deficiencies and enhancements with key members of the D.C. District Government. I will continue to provide guidance and make security recommendations after consulting with USMS subject matter experts.

30. The D.C. courts are now spread out among multiple buildings, as opposed to just the H. Carl Moultrie Courthouse, and the expansion will likely continue. How has this expansion impacted your staffing and funding needs? Do you believe your office has sufficient resources to keep pace with this expansion? If not, what additional resources do you believe are necessary?

Employees of the U.S. Marshals Service do not routinely provide judicial protection, prisoner production, or security functions outside the Moultrie building. Therefore, expansion outside of the Moultrie building will not likely result in additional staffing or funding needs. However, expansion within the Moultrie building would require additional staff and workspace commensurate with the expansion. Expansion within the Moultrie building that includes additional judicial officers, splitting large courtrooms into multiple courtrooms, and new construction (new two-tier juvenile cellblock) has resulted in deficiencies in both manpower and the associated office space. Additional manpower and physical space, along with the funding necessary to support the increase, are the primary resources necessary to address the current deficiencies and anticipated shortfalls due to planned expansion.

31. The Newseum is currently under construction at a site bounded by Pennsylvania Avenue, Sixth Street, and C Street NW, just across the street from the main D.C. Courthouse, the Moultrie building. The expected completion date is 2007. Security concerns have been raised by court officials over the potential location of tour bus traffic and passenger drop off on C Street, the same street buses transporting prisoners from the D.C. jail to the court use.

- a. Have you examined this issue? If so, has there been a solution to this problem?

Planning meetings had occurred several years prior to my arrival. Members of my senior management team attended and provided subject matter expertise, some of which was incorporated into the current configuration of the Newseum. However, many security recommendations were dismissed due to the high cost of implementation or for aesthetic reasons.

- b. If this problem has not been resolved, what have you done or plan to do to ensure an appropriate resolution?

All efforts to address the security concerns created by the construction of the Newseum have been exhausted during the preconstruction period when the opportunity existed for design impact. I am currently working with the Court by providing recommendations that the Court can now take in addressing the additional concerns that this new building will create upon completion.

32. In January, a bullet discharged from its casing during a trial at the Superior Court of District of Columbia. According to a *Washington Post* account, it was a “bizarre” incident of a paper evidence bag containing pieces of ammunition falling to the floor and one of the rounds detonating. (*see* “Brief Scare in D.C. Court When Evidence Discharges,” January 6, 2005). The article also reported that the “Marshals Service is investigating the incident and will advise the court’s administration if procedural changes are needed.” Has this investigation concluded? What did it find? What, if any, changes do you believe need to be made as a result of this incident?

The investigation is complete. The paper bag containing the ammunition weakened, and while being introduced as evidence during trial, a single round of ammunition fell and discharged upon striking a power strip on the floor. The incident was considered unlikely to ever recur. However, given the potential for serious injury, the evidence technician was admonished to use additional care when preparing ammunition for introduction into evidence. In consultation with law enforcement agencies, the Court, and the U.S. Attorney’s Office, it was decided that any future productions of ammunition in trials would be handled using the new procedures.

33. On January 31, 2006, the *Washington Post* reported that a D.C. jail inmate being transported by the USMS to a hearing in D.C. Superior Court was killed in traffic when he escaped a prisoner transport bus near the entrance to the Third Street tunnel in Northwest Washington. Was the inmate being transferred by U.S. Marshal Service personnel or by D.C. Department of Corrections personnel? What, if any, measures did you take as Acting U.S. Marshal to ensure security of inmates during transport to and from D.C. Superior Court?

The inmate was being transported by Department of Corrections’ personnel working under a personal services contract as the result of an Intergovernmental Agreement with the Department of Corrections for the transport of prisoners. Security awareness in the sally-port area was enhanced to include mandated inspections of the undercarriage of each vehicle leaving the prisoner bay area. Employees of both the USMS and Department of Corrections received counseling on the importance of remaining vigilant during the transfer of prisoners between the Department of Corrections and the U.S. Marshals Service.

34. An April 8, 2005 Washington Post article entitled, "D.C. Court Custodial Chief Has Record" reported that Mauricio Navarrete was managing a \$1.2 million annual contract for custodial services at the D.C. Superior Court, even though he had plead guilty two years earlier to taking part in a \$2 million fraud at Ronald Reagan National Airport while he was in charge of janitorial staff there. The article stated that court officials said that all contractors must pass background checks by the U.S. Marshals Service and that you indicated the system may need to be improved. You were quoted as saying, "I'm definitely looking at reviewing and, if necessary, changing the way we do business." What, if any, steps did you take based on your review of the situation?

Although the decision to allow workers within buildings in the D.C. Court Complex rests with the Executive Office, the USMS provides a courtesy background check prior to their admittance. The final decision whether to permit entrance to any particular individual is solely determined by the Court's Executive Office. In this case, Navarrete's record was known to the USMS and this information was provided to the Executive Office. A determination was made by the Executive Office to allow his admittance. In response, I asked that a presentation be made by the Federal Protective Service to the Executive Office illustrating the need for a formal process for contractor clearances. I have notified the Executive Office that the USMS will no longer provide courtesy background checks of contractors with business at the D.C. Court Complex effective October 1, 2006.

Witness Protection

35. A February 2, 2004 *Washington Post* article entitled "Girl's Slaying Opens Window On Intimidation" highlights the concerns surrounding witness protection. The article highlights the murder of 14-year-old Jahkema Princess Hansen as an example of this problem. What is the role of the USMS's D.C. Superior Court office in witness protection in the District of Columbia and how is the role coordinated, if at all, with D.C. police? What have you done as Acting U.S. Marshal to address this issue? Do you believe the office needs additional resources to more effectively protect witnesses?

Our office works closely with the U.S. Attorney's Office and the short-term Witness Protection Program administered by the Metropolitan Police Department. We also facilitate productions made by Deputy U.S. Marshals assigned to the Federal Witness Protection Program. In both cases, we serve in a support capacity allowing for access to restricted areas of the courthouse, provide safe-rooms during the witnesses' appearance, provide secure parking for transport vehicles, and provide additional security personnel in the courtroom if necessary.

I maintain an open dialogue with those involved in the witnesses protection process. In fact, two members of my senior management team attended two separate presentations on victim/witness programs in the D.C. area within the past thirty days.

This does not occur on a frequent enough basis to warrant additional resources. Unique situations may be addressed through personnel resources provided by the Marshals Service Special Assignment Program.

IV. Relations with Congress

36. Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?

Yes.

37. Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?

Yes.

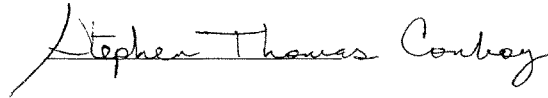
V. Assistance

38. Are these answers your own? Have you consulted with the Department of Justice, the USMS, the Superior Court or any interested parties? If so, please indicate which entities.

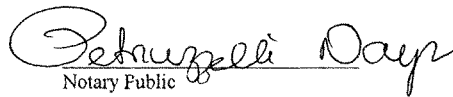
The answers are my own, however, I consulted with my Chief Deputies and USMS Headquarters personnel to ensure the accuracy of the information provided.

AFFIDAVIT

I, Stephen Thomas Conboy, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



Subscribed and sworn before me this 23rd day of June, 2006.


Notary Public

Petruzzelli Days
Notary Public
District of Columbia
My Commission Expires
September 14, 2009

U.S. Senate Committee on Homeland Security & Governmental Affairs
Pre-Hearing Questionnaire
For the Nomination of Stephen Thomas Conboy to be
United States Marshal for the Superior Court of the District of Columbia

Additional Questions Submitted by Senator Frank. R. Lautenberg (D-NJ)

Consultation with Congress/Residential Issues

1. When a President nominates a person for a U.S. Marshal position, is there usually consultation with the relevant Members of Congress (*i.e.*, the U.S. Senators who represent the state which contains the Judicial District in question)?

That is my understanding.

2. With regard to your nomination, since the District of Columbia does not have U.S. Senators, did administration officials consult with/seek input from the District of Columbia Delegate, Congresswoman Eleanor Holmes Norton, before nominating you to be U.S. Marshal for the District of Columbia Superior Court?

I am aware that administration officials consulted with the Mayor's office, but I am not aware of any such consultation with the Delegate's office.

3. Did you have a "courtesy call" with Congresswoman Norton prior to your nomination? Have you met with her since you were nominated?

No.

4. Do you currently reside in the District of Columbia? If not, are you willing to move to the District of Columbia, the community that you will serve as U.S. Marshal?

No. Although there is no requirement to do so, I have considered same for professional and personal reasons.

5. Do any U.S. Marshals currently reside outside of their Judicial Districts?

Under 28 USC § 561(e), some U.S. Marshals are permitted to live outside their districts. My counterparts in D.C. District Court and the Southern District of New York reside outside of their respective districts.

6. The District of Columbia is unique in that it has two U.S. Marshals serving two different courts in one Judicial District. If neither the current U.S. Marshal for the District of Columbia District Court nor you reside in Washington, is it your opinion that there are no qualified candidates for this position who do reside in the District of Columbia, the community that the two U.S. Marshals serve?

No.

Management Issues

1. How many women and minorities are currently American Federation of Government Employees (AFGE) Union Stewards in your Judicial District?

Due to the high number of bargaining unit employees at D.C. Superior Court, a letter dated June 17, 2004, from the Acting President of Local 2272, AFGE, designated four employees as Shop Stewards for the purpose of administering the National Agreement. Of those four, only two remain, one of which is an African American male. No females were selected by the AFGE to be Shop Stewards at D.C. Superior Court.

2. How many Deputy U.S. Marshals (DUSM) in your Judicial District are African-American? How many African-American DUSMs have been promoted to Criminal Investigator positions within the District since you have been Acting Marshal?

Currently, there are seven African-American DUSMs. Two African-American DUSMs have been promoted to Criminal Investigators (1811s).



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

February 17, 2005

The Honorable Susan M. Collins
Chair
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510-6250

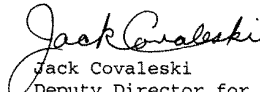
Dear Madam Chair:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Stephen T. Conboy, who has been nominated by President Bush for the position of United States Marshal for the District of Columbia Superior Court.

We have reviewed the report and have also obtained advice from the Department of Justice concerning any possible conflict in light of its functions and the nominee's proposed duties.

Based thereon, we believe that Mr. Conboy is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,


Jack Covaleski
Deputy Director for
Agency Programs

Enclosure